

Supreme Court, U.S.
FILED
SEP 11 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-2048 (23)

IN THE
Supreme Court of the United States
October Term, 1989

TEXACO INC.,

Petitioner,

-vs.-

RICKY HASBROUCK, d/b/a
RICK'S TEXACO, et al.,

Respondents.

RESPONDENTS' RESPONSE TO MOTIONS FOR
LEAVE TO FILE BRIEFS AS AMICI CURIAE
IN SUPPORT OF PETITIONER

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Nine trade organizations and one corporation have moved for leave to file briefs as amici curiae in support of petitioner.¹ Respondents submit this objection to the motions filed herein.

An application for amicus curiae status must establish that it will set forth relevant facts or questions of law which have not been or will not be adequately presented by the parties, and which have some relevancy to the disposition of the case. Rule 36.3, S. Ct. R. Here, all of the Applicants except one are trade organizations which have overlapping

¹Motions and briefs were filed by the Society of Independent Gasoline Marketers of America, the National Association of Convenience Stores, the American Petroleum Institute, the National Association of Manufacturers, the National Association of Texaco Wholesalers, the National Association of Wholesaler-Distributors, the Motor Vehicle Manufacturers Association of the United States, the Motor and Equipment Manufacturers Association, the Petroleum Marketers Association of American and Boise Cascade Corporation. The moving parties are referred to herein as "Applicants."

memberships and interests, and positions identical to those of petitioner Texaco, Inc.

1. The Applicants do not represent separate interests. For example, the Motor Vehicle Manufacturers Association's members include Chrysler, Ford, GM, Honda, Volvo and Navistar, but such companies are also members of the National Association of Manufacturers and the Motor and Equipment Manufacturers Association. The Petroleum Marketers Association of America (PMAA) is composed of state and regional trade associations representing jobbers and wholesale distributors of refined petroleum products, including the various Texaco Wholesalers who have filed a separate motion and brief. The Society of Independent Gasoline Marketer Associations (SIGMA) is composed of petroleum wholesalers and retailers who are members of PMAA. Within PMAA, the "Brand Chairman's Committee" is composed of wholesaler representatives of the major petroleum refiners, including Texaco,

who are also members of the National Association of Texaco Wholesalers and the PMAA. The PMAA, in turn, is a member of the National Association of Wholesaler-Distributors, and Boise Cascade Corporation, an individual Applicant, is a member of the National Association of Manufacturers. Because of this substantial duplication of memberships, the Applicants should be limited to one brief, if any filing is appropriate.

2. The Court should deny the Applicants' motion because the proposed amicus briefs all repeat essentially the same argument as made by Texaco. They do not state unique facts or questions of law which are relevant to this case and different from those presented by Texaco. Indeed, the Applicants' motions and proposed briefs affirmatively demonstrate that the Applicants are not aware of the factual record underlying this case, or even the actual question of law presented by Texaco in the courts below. As a result, the

Applicants' views can add little of value to the Court's consideration of Texaco's position.

a. The proposed briefs focus on the issue of a "uniform wholesale discount" which was not presented to the district court or the court of appeals. The evidence, in fact, was that Texaco sold gasoline to "wholesalers" in Spokane at different -- not uniform -- prices, and there was no evidence of uniform prices. See Brief of Respondents. The "safe harbor" of uniform pricing sought by the Applicants cannot be found in the facts of this case.

b. Similarly, each of the Applicants asserts that the Ninth Circuit opinion is a challenge to "legitimate" distributor discounts that are lawful under the Robinson-Patman Act. But this case did not involve legitimate functional discounts at all. See Brief of Respondents. The Applicants' characterization of Dompier and Gull as "legitimate

wholesalers" is contrary to the evidence in the case unless one assumes that the courts will be bound by the label a seller places upon a purchaser. The trial court record established that the question of whether Dompier and Gull were, in fact, retailers, was hotly disputed. That dispute was resolved by the jury in favor of the respondents. See Respondents' Brief.

c. Virtually every Applicant is also unaware that Gull Oil Co., one of Texaco's favored customers, was retailing throughout the entire damage period, and that the other favored customer, Dompier Oil Co., retailed throughout the damages period as well.

3. Each of the Applicants also sets forth issues which are not raised in this record. API and NAM argue that suppliers would somehow violate the Petroleum Marketing Practices Act § 2801 by compliance with the Ninth Circuit opinion. But Texaco never

raised a defense in the district court or court of appeals based upon the PMAA. The Texaco Wholesalers/Distributors argue that retail outlets "exhaust their supply in underground tanks in a quick time frame and wholesalers are better able to resupply retail outlets." Again, such facts were not before the district court or the court of appeals. In any event, this argument assumes that wholesalers have adequate bulk storage to supply local needs which was not the case in Hasbrouck. JA 122-126, 187, 189-192. The Texaco Wholesalers also argue that for some reason, the "national defense" is linked to the facts in this case. Again, no facts pertaining to the petroleum supply as it relates to the national defense were presented in this case in the courts below.

The Motor and Equipment Manufacturers Association argue that wholesalers carry products from a multitude of suppliers, making Robinson-Patman compliance under this

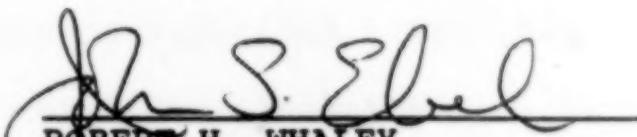
decision impossible. However, in Hasbrouck the plaintiffs and favored purchasers had only one supplier, Texaco. Any decision relating to customers who purchase from more than one supplier will need to await another day.

4. Virtually all the Applicants assume that the Ninth Circuit opinion would require suppliers and their customers to share detailed cost information in order to comply with its decision. The Applicants list a litany of horrors which they assert will result from the Ninth Circuit opinion. These were never presented to either the Ninth Circuit or district court by Texaco. As an example, every Applicant argues that this decision will cause distributional inefficiency, lead to greater vertical integration, resale price maintenance, eliminate wholesalers as a class, result in discrimination among wholesalers, require manufacturers to control the wholesaler's retail price, and harm independent

retail stations. See, e.g., Motion and Proposed Brief of SIGMA. None of the above defenses were ever presented in the courts below.

Because the Applicants present no unique facts or questions of law; because they base their arguments on facts outside the record of this case; and because Applicants are not truly separate organizations with separate interests, their motions should be denied. In the alternative, the Court should limit the Applicants to one brief since their interests (and in many respect their memberships) are essentially identical.

RESPECTFULLY SUBMITTED this 6th day of September, 1989.



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